(1) Supreme Court, U.S.
FILED

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No.

In the

Supreme Court of the United States

ABDUL AZIZ,

Petitioner,

v.

SYLVIA H. RAMBO,

Respondent.

On the petition for a writ of certiorari
to the United States Court of Appeals
for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

ABDUL AZIZ, Ph. D.
Petitioner pro se
19924 Lake Park Drive
Germantown, MD 20874-1084
Phone: (301) 528-0241

25pp

QUESTIONS PRESENTED

1. Whether the respondent has abused her powers and neglected her duties as District Court Judge by not renderring a final judgment in my civil action No. 96-CV-1511 or deliberately making an inordinate delay to render the final judgment, and deprived me of my constitutional right. justice delayed is justice denied.

2. Whether I was better qualified than the person hired.

3. Wheter the person hired was a current employee of the employer, Penn State University, York Campus.

4. Whether the employer bribed the person hired to take the job in order to avoid hiring me because I belonged to the protected group.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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TABLE OF AUTHORITIES

Coordinates of authorities are given below in parenthesis. First digits are page numbers, second digits are line numbers. Example is (3 14) is page 3, line 14.

Authorities are cited in bold faces:

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1. Title VII of Civil Rights Act of 1964, as amended: (i 1), (i 4), (i 7), (1 24), (2 22), (4 1), (4 4), (5 11), (5 13), (5 21), (6 24), (7 14), (8 26), (9 14), (10 2), (10 16), (17 13)

2. ADEA of 1967: (i 2), (2 23, (4 8), (4. 18), (6 26), (8 23), (10 3),

3. Rule 56(c): (3 8), (3 9), (4 4), (4 13), (4 14), (4 15), (4 20), (5 1), (5 1), (5 2), (5 13), (6 3), (6 4), (6 15), (6 33), (8 15), (8 15), (8 21), (8 22), (9 15), (10 6), (10 7), (10 8), (10 14), (10 15), (12 9), (12 19), (12 20), (13 7), (13 22), (13 23), (14 14), (14 24), (14 25), (15 11), (15 12)

4. Supreme Court Opinion, Conley v.Gibson 355 US41 (1957): (6 8).

5. Supreme Court Opinion on St. Mary's Hon. Ctr. v. Hicks 509 US 502, 506-512, 113 S. Ct. 2742 (1973): (ii 3), (6 10)

6. Anderson, 477 US at 248: (10 8).

7. Inland Oil v. United States: 600 F. 2d 725 (8th Circle.

In The
SUPREME COURT OF THE UNITED STATES

Abdul Aziz, *Petitioner,*

v.

HONORABLE SYLVIA H. RAMBO,
Respondent.

I. PETITION FOR WRIT OF CERTIORARI

Petitioner, Abdul Aziz, petitions this court to grant a writ of certiorari to review the judgment of the United States Court of Appeals & of the District Court.

II. OPINIONS BELOW:

None published.

III. JURISDICTION:

1. The final judgment to be reviewed is the appeals court OPINION, exh._1_, and SUR PETITION FOR HEARING dated Mar 28, 2000, exh._2

Jurisdiction is conferred upon the Supreme Court by Rule 10 (c), which says "a United States Court of Appeals has decided an important question of federal law that has not been, but should be settled by this court," **and** "has decided an important federal question in a way that conflicts with relevant decision of this court."

3. And jurisdiction is conferred upon the Supreme Court by federal laws, **Title VII of Civil Rights Act of 1964, and**

I. BACKGROUND

1. Toward the end of 1994, plaintiff applied to the Penn State University, York Campus for the temporary position of an Engineering Technology Project Director. He was not hired. The person hired, Gaston, did not apply for the position and was not in the applicants' pool. He was a current employee of the employer. **The employer did not know that it was illegal to hire**

(i) a current employee
(ii) who did not apply or
(iii) who was not in the applicants' pool,
after the position was nationally advertised.

Therefore, the employer committed an unlawful action. Simultaneously, the employer committed a more serious unlawful action. The employer bribed Gaston to take the job in order to avoid hiring me. The terms of the bribe were: (i) Gaston will **temporarily** resign from his current tenure track Assistant Professorship and (ii) will return to it without losing any benefits. All of these information were obtained from Gaston's deposition, exh._6_, after his temporary job as the Director was terminated.

I filed a civil rights complaint No. 97-CV-1018 against the employer on 7-3-97. Hon. Sylvia Rambo was the presiding judge. The discovery was complete with the court's finding that I was the only candidate qualified out of 45 candidates applied. But a final judgment was not made yet in spite of repeated requests. On 11-17-99, I filed a motion, exh._3_, requesting the court to render a final judgment or schedule the case for trial. The court did neither.

The Scranton Court did not address any of my three

allegations, (i), (ii) or (iii).

Thereafter, on 8-4-99 I filed a complaint under tort against Judge Sylvia Rambo, # 1: CV-99-1398, in the middle district court of Pennsylvania, exh.3_. My allegations were:

(i) The court was bias. (ii) The court was incompetent, (iii). It will never make a final judgment because of (i) & (ii). The case was transferred to the United States District Court in the Northern District of Pennsylvania at Scranton. The Scranton Court did not address any of my three allegations, (i), (ii) & (iii). Therefore, clearly, the judge at the Scranton Court did not adjudicate my complaint under tort numbered above. Its honor adjudicated the defendant's motion to dismiss plaintiff's complaint pursuant to Rule 12(b)(6) for the claims which the defendant (Rambo) said plaintiff (Aziz) failed to state. But the defendant did not recognize that Rule 12(b)(6) is not applicable to plaintiff's claim that Judge Rambo has not yet rendered a final judgment, because sooner or later there has to be a judgment in the case from the United States Court System. Even the Scranton court has said, "defendant. the presiding judge in the Middle District Action, had yet to issue a final judgment and/or schedule the case for trial," exh._5_, page _8a_, line _6_. The Scranton court statement is applicable.

II. ARGUMENTS ON THE QUESTIONS PRESENTED

1. Whether the respondent has abused her powers and neglected her duties as District Court Judge by not renderring a final judgment in my civil action No. 96-CV-1511 or deliberately making an inordinate delay to render the final judgment, and deprived me of my constitutional right. justice delayed is justice denied.

It is true that sooner or later the district court will render a final judgment because I am entitled to it. It is my constitutional right.

2. Whether I was better qualified than the person hired.

Gaston did not apply. He was not in the applicants' pool. So, not considering him as a contestant, Judge Rambo found that I was the only qualified person from among the 45 candidates.

3. Whether the person hired was a current employee of the employer, Penn State University, York Campus.

Yes, he was a tenure-track Assistant Professor.

4. Whether the employer bribed the person hired to take the job in order to avoid hiring me because I belonged to the protected group.

Yes. Vide exh._6_, pages 1, 2, & 3, Gaston's deposition.

III. GIST

LONG TIME AGO I FILED A CIVIL RIGHTS ACTION AGAINST THE PENN STATE UNIVERSITY AT YORK CAMPUS. THE DISTRICT COURT HAS NOT YET ISSUED A FINAL JUDGMENT OR SCHEDULE THE CASE FOR TRIAL. I AM REQUESTING THE SUPREME COURT TO ORDER THE DISTRICT COURT TO RENDER A FINAL JUDGMENT OR SCHEDULE THE CASE FOR IMMEDIATE TRIAL.

VI. PRAYERS

WHEREFORE, for all the foregoing reasons. this humble petitioner prays that the Honorable Supreme Court of the United States of America accept the petitioner's writ of certiorari for the sake of ever increasing minorities of the United States

Respectfully submitted,

301-528-0241

Abdul Aziz, Ph.D., Petitioner Pro se, 19924 Lake Park Drive, Gemantown, MD 20874-1084

APPENDIX OF EXHIBITS

Nos.	Titles	Pages
1.	Opinion of the Court of Appeals	1a
2.	Sur Petition Pour Rehearing	3a
3.	Plaintiff's Request for Reconsideration	4a
4.	Plaintiff's Complaint Under Tort	5a
5.	Memorandum Order	7a
6.	Gaston's Deposition	12a

UNREPORTED-NOT PRECEDING

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 99-1054

ABDUL AZIZ,

Appellant,

v.

SYLVIA H. RAMBO

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
(D.C. Civ. No. 98-cv-05840)
District Judge: Honorable Ronald L. Buckwalter

Submitted Under Third Circuit LAR 34,1(a)
October 1, 1999
BEFORE; SLOVITER, ROTH and WEIS, CIRCUIT JUDGES
Filed DEC - 1 1999

OPINION OF THE COURT

PER CURIAM

On November 4, 1998, Abdul Aziz filed a complaint in the United States District Court for the Middle District of Pennsylvania alleging that Honorable Sylvia H. Rambo obstructed Justice, committed bias, abused power, was

inherently incompetent, was engaged in a tacit conspiracy, attempted to defraud and committed perjury in connection with a dismissal of a complaint-that Aziz had filed against Penn State University. On November 18, 1998, the District Court dismissed Aziz's action under Rule 12(b)(6). Aziz filed a timely for consideration, which was denied. We will affirm.

A pro se complaint should be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim that would entitle him to relief. Hughes v. Rowe, 449 U.S. 5, 10 (1980).

Our review of the District Court is plenary and we accept as true all factual allegations in the complaint. Steam fitters Local Union No. 20 Welfare Fund v. Phillip Morris Inc. , 171 F.3d 912, 919 (3rd Circuit 1999).

Aziz has not alleged facts sufficient to support his claim. Moreover, a District Court may dismiss an action under Rule 12(b)(6) on its own initiative "provided that the complaint affords a sufficient basis for the court's action." Bryson v. Brand Insulation. Inv., 621 F.2d 556, 559 3rd Cir. 1980). We therefore concluded that dismissal of Aziz's was appropriate.

We also note that Judge Rambo is absolutely immune from monetary liability for acts committed "within [her] judicial jurisdiction." Person v. Ray. 386 US 547, 554 (1967). Aziz has not alleged any facts to suggest that Judge Rambo's actions were taken outside her judicial jurisdiction. Moreover, it does not appear from the face of the complaint or from the arguments presented in the briefs that such facts exist.

Accordingly we will affirm the judgment of the District Court.

EXHIBIT 2

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 99-1054

ABDUL AZIZ,

Appellant,

v.

SYLVIA H. RAMBO,

Appellee.

SUR PETITION ~~FOUR~~ FOR REHEARING

Present: BECKER, Chief Judge, SLOVITTER, SIRICA, MANSMANN, GREENBERG, NYGAARD, ALTO, ROTH, McKEE, RENDEL, BARY, and WEIS,* Circuit Judges

The petition for rehearing filed by Appellant Abdul Aziz.

In the above entitled case having been submitted to the judges who participated in the decision of this court and all other circuit judges in the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in the regular active not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court
SD/- Illegible

Date: MAR 28 2000 Circuit Judge

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* Hon. Joseph H. EIS, Senior Circuit Judge as to panel rehearing only

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
235 North Washington Ave. P.O. Box 148, Scranton, PA 18501

Case No. 1:CV-99-1398

ABDUL AZIZ,
Plaintiff,

v.

THE UNITED STATES (SHR),
Defendant.

Date Mailed: 11-17-99

PLAINTIFF'S REQUEST FOR RECONSIDERATION

In my complaint I alleged bias, incompetence, and failure to make a final judgment and or schedule the case for trial. I claimed monetary damage also. In the reconsideration I am withdrawing my allegations of bias, and incompetence. I am also withdrawing my claim for monetary damage. Since I am withdrawing my claim for monetary damage, the question of immunity does no longer stay.

NEW PRAYERS

WHEREFORE, this humble plaintiff prays that this honorable court order Judge Rambo to render a final judgment or to submit the case to a jury trial at an early date for "justice delayed is justice denied:.

Respectfully submitted,

EXHIBIT 3

Date:11-17-99
Phone: 301-528-0241/0246

Abdul Aziz, Ph.D., Plaintiff Pro se, 19924 Lake Park Drive, Gemantown, MD 20874-1018

FXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Case No. 1:CV-99-1398

ABDUL AZIZ,
Plaintiff,

v.

SYLVIA H. RAMBO,
Defendant.

Date Mailed: 8-4-99

PLAINTIFF'S COMPLAINT UNDER TORT

I. I, Abdul Aziz, Plaintiff Pro se allege as follows:

II. Jurisdiction is conferred upon the court by[1] III. The defendant is Sylvia H. Rambo, Judge U.S.District

[1] With due humble submission I request the hon. court to kindly instruct the clerk of the court to fill up the blank with the appropriate number

Court, Harrisburg, PA. The plaintiff is Abdul Aziz, 19924 Lake Park Drive, Germantown, MD 20874-1084..

IV. In response to an advertisement in the Chronicle of Higher Education, I, the plaintiff, applied for the tempo-ray position of a Technology Director in the Penn State University, York Campus. I was not hired. I was the only candidate qualified for the position out of 44 candidates applied. I filed a complaint **No. 1:97-CV-1018** on 7-3-97. Hon. Sylvia Rambo was the presiding judge. A final judgment has not been made yet in spite of repeated requests. On **8-8-98** I requested the court to render a judgment. The court did not do so. On 6-21-99, I filed a motion (copy enclosed) requesting the court to submit the case to a jury trial, The court did not do so either.

V. My allegations are:

(i) The court is bias. (ii). The court is incompetent. (iii) It will never make the final judgment because of (i) & (ii).

VI. Relief sought:

(i). Compensatory damage in the amount of $210,000. (ii) Damage due to emotional distress for pains and sufferings in the amount of $1,000,000.00 and (iii) Punitive damage $2,000,000.00. 2. Enclosed is a check in the amount of $150.00 for court fees. 3. I demand a jury trial. 4. Kindly send me sign in summons for service of process. 5. Kindly send me a civil cover sheet for me to fill up and return. 6. Kindly let me know if there is any deficiency.

Respectfully submitted,

4. Kindly send me sign in summons for service of process.
5. Kindly send me a civil cover sheet for me to fill up and return.
6. Kindly let me know if there is any deficiency.

Respectfully submitted,

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

C. A. No. 99-CV-1398

ABDUL AZIZ,
Plaintiff,

v.

THE HONORABLE SYLVIA H. RAMBO,
Defendant.

MEMORANDUM ORDER
INTRODUCTION & BACKGROUND

Plaintiff Abdul Aziz filed this action on August 6, 1999 against defendant Honorable Sylvia H. Rambo, alleging under Tort "Bias, incompetence and failure to make a final judgment and or schedule the case for trial. Plaintiff seeks, inter-alia, compensatory and punitive damage. Plaintiff's allegations arise out of defendant's actions with respect to a civil lawsuit filed by plaintiff in the United States District Court for the Middle District of Pennsylvania against Pennsylvania State University, ("Penn State") in which plaintiff that he was not hired for the temporary position of

Technology Director at Penn State York County Campus the basis of unlawful race, national origin, and age discriminations.[2]That action was filed by plaintiff on July 3, 1996. According to record at bar, at the time plaintiff filed this action, defendant, the presiding judge in the Middle District Action, had yet to issue a final judg-ment`and/or schedule the case for trial.

On September 22, 1999, defendant file a motion to dismiss plaintiff's complaint pursuant to Federal Procedure of Civil Rule 12 (b)(6) for failure to state a claim. Briefing is complete with respect to this motion.[3] Also pending before the court plaintiff's motion to amend the complaint seeking to substitute The United States for defendant.

II. STANDARD OF REVIEW

In deciding a motion under Rule 12(b)(6), a court primarily must consider the allegations contained in the compliant, although matters of public record, orders, items appearing in the record of the case as well as exhibits attached to the complaint may also be taken into account.

On ruling on a 12(b)(6) motion, the factual allegations of the complaint must be accepted as true. Moreover, the court is bound to give the plaintiff the benefit of every reasonable inference to be drawn from those allegations. Accordingly, the court must resolve any ambiguities concerning the sufficiency of the claim in favor of the

---

[2] At present plaintiff has filed at least eight similar lawsuits based upon his denial of employment by both the Berks and York County Campuses of Penn State and the legal proceedings arising therefrom.

[3] Although defendant has failed to file a reply brief, the time for submitting such brief has passed.

plaintiff. Thus the court "may dismiss a complaint only when it is clear that no relief could be granted under---- set of facts that could be proved consistent with the allegations." Where, as here, the plaintiff is a pro se litigant, the court has an obligation to construe the complaint liberally.

III. DISCUSSION

As a threshold matter, the court notes that plaintiff does not specifically state whether he is suing defendant in her official and/or individual capacities. In the absence of evidence to the contrary, the court will assume that plaintiff's suit is against defendant in both her individual and official capacities. Thus, the court will deny plaintiff's motion to amend his complaint..

As a general rule, judicial officers are absolutely immune from claims seeking monetary damages arising from conduct performed in their judicial capacity. This judicial immunity is "immunity from suit, not just from assessment of damages."

****

The following is plaintiff's comment:

In my complaint under tort, exh._4_, I had sued defendant in her official and individual capacities by asking for punitive damage. In my request for reconsideration, exh._3_, I have withdrawn my claim for punitive damage. Thus, finally I have sued defendant in her official capacity. In the instant complaint, my allegation is that the defendant has not rendered a final judgment yet or scheduled a trial. Thus, suing defendant in her official and/or individual capacities is independent of my allegation.And since I am not seeking monetary damages, exh._3_, the question of immunity does not arise. There no damage involved.

****

Accordingly, "[t]his immunity applies even when the judge is accused of acting maliciously and corruptly.." This immunity can be overcome only in two circumstances: a judge is not immune (1) "from liability for non judicial actions, i. e., not taken in the judge's non judicial capacity"; or (2) "for actions, though judicial in nature, taken in the complete absence of complete absence of all jurisdiction. Neither of the these exceptions are present in the case at bar. Here, plaintiff alleges inter-alia that defendant because of her bias and incompetence has failed to issue a final judgment or schedule for trial a case pending before her that fled by plaintiff. These allegations stem from conduct defendant engaged in while acting in her judicial capacity. Thus, to the extent that plaintiff is suing defendant in her individual capacity the claims against shall be dismissed. Insofar as plaintiff is defendant her in her official capacity the defense of judicial immunity, a personal immunity, is not available.)The only immunity that can be claimed as an official-capacty action are forms of sovereign immunity that the entity, qua entity, may possess, such as the Eleventh Amendment.") When a government official is sued in her official capacity, the real party in interest is the government entity of which official is an agent. Thus, "[a}s as long as the government entity receives notice and an opportunity to respond, an official capacity suit is, in all expects other name, to be treated as a suit against the entity." The United States is sovereign and as such is immune from suit unless it has expressly waived such immunity and consented to suit. Where the United States as not consented to be sued, dismissal of the action is required. Under the circumstances at bar, the United States, the real party in interest with respect to a suit against defendant in her official capacity, has not waived its immunity, Accordingly, plaintiff's complaint with respect to defendant acting in her official capacity is barred.

IV. CONCLUSION

Therefore, at Wilmington this 3rd day of 1999, it is ordered that:

1. Plaintiff's motion to amend is denied.
2. The defendant's motion to dismiss is granted.
3. The suit is dismissed with prejudice.

SD/- Illegible

United States District Judge

GASTON'S DEPOSITION

EXHIBIT 6 **Page 1** **ORIGINAL**

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ABDUL AZIZ,
Plaintiff, **CIVIL ACTION**
No. 1:CV-95-1511

vs.

PENNSYLVANIA STATE UNIVERSITY, YORK CAMPUS **(Chief Judge Rambo)**
Defendant.

Deposition of : **Charles A Gaston**

Taken by: : **Plaintiff**

Date: : **March, 1997, 1:40 p.m.**

Before: : **Emily Clark, RMR, Reporter-Notary**

Place: : **1031 Edge Comb Avenue**
: **York, Pennsylvania**

APPEARANCES:

ABDUL AZIZ, pro se

McQUADE, BLASKO, SCHWARTZ, FLEMING & FAULKNER
BY: KATHERINE M. LLEN, ESQUIRE
For - Defendant

INDEX

WITNESS

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EXHIBITS

(None marked)

STIPULATION

It is hereby stipulated by and between the respective parties that sealing, certification and filing are waved; and that all objections except as to the form of the question are reserved until the time of trial

CHARLES A. GASTON, called as a witness. being duly sworn, was examined and testified, as follows:

By DR. AZIZ:

Q, I came to know from the previous testimony that the position you are in now is going to be discontinued very soon. Are you gin to go be back to your job from which you came?

A, Not exactly. I was on the tenure track here. In order to take this full-time position, I had to resign from tenure track and became what they call five year fixed term. So, it is not exactly the same. And - -

But you will go back to the job?

A, To teaching? Yes.

Q. Okay. All right, Now, Dr. Gaston, this is the exhibit 1 This is the exhibit 1, Do I have another copy of the exhibit? In the second paragraph it says an M.S., mechanical engineering, mechanical, manufacturing, or related engineering discipline.